

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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OFFICE OF SECRETARY

In the Matter of)
)
Replacement of Part 90 by Part 88 to)
Revise the Private Land Mobile Radio)
Services and Modify the Policies)
Governing Them)
)
and)
)
Examination of Exclusivity and)
Frequency Assignment Policies of the)
Private Land Mobile Radio Services)

PR Docket No. 92-235

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TO: The Commission

REPLY COMMENTS OF UTC

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Summary

UTC reiterates its support for the consolidation of the current radio pools into three (3) new radio service pools: (1) Emergency Response; (2) Public Service; and (3) Business/Commercial. UTC disagrees with those commenters that suggest that consolidation is unwarranted and that the *status quo* should be maintained.

UTC urges the FCC to consolidate the service pools based on their criticality of functions. Grouping services along functional lines will permit the application of distinct policies to protect "higher priority" functions from the encroachment or commercialization while permitting flexibility in the "lower priority" services.

UTC strongly disagrees with the Joint Commenters' proposal to consolidate the radio pools into two (2) broad categories. This proposal would make sound spectrum management by the coordinators difficult and protection of "higher priority" services nearly impossible.

UTC notes that a number of commenters support some form of exclusivity for private land mobile radio licensees. LMCC, like UTC, recommended a form of earned or "shared" exclusivity which would provide protection for a specific service area. UTC recommends that the FCC require all co-channel licensees that are a party to an earned exclusivity arrangement to convert to narrowband equipment within twelve months or, if justified, pursuant to a five-year slow-growth construction schedule. UTC reiterates its comments that exclusivity should be limited, at least initially, to existing licensees and that exclusivity should be tailored to address the unique attributes of the three radio service pools.

UTC supports the concept of allowing resale of "reserve" capacity on private land mobile systems. In order to deter speculators and to ensure that the resold capacity is truly reserve, the FCC should require licensees to fulfill channel loading requirements based solely on internal traffic. In order to preserve the nature of the Emergency Response and Public Service pools, UTC urges that unlimited resale be prohibited; instead, the FCC should permit lower priority services to resell capacity to eligibles within their service pools and to higher priority users, but not vice-versa.

UTC and the vast majority of commenters oppose the use of competitive bidding in the private radio bands. The use of competitive bidding is inconsistent with current and pending FCC auction authority and impractical for these heavily-used bands. UTC and numerous commenters also oppose the FCC's proposal to auction overlay licenses in these bands, noting that overlay licensing will result in the elimination of private communications services in these bands. UTC recommends that, if competitive bidding is introduced in these bands, the FCC ensure that private licensees will have a fair opportunity to participate.

UTC shares some of the concerns raised by commenters in response to the FCC's proposal to impose user fees. UTC agrees that the imposition of such fees on Part 90 licensees only is inequitable since other licensees, including those offering commercial services, are not subject to such fees. UTC agrees with those commenters that express concern over the adverse effect that these fees will have on public safety and other entities that have a limited ability to raise capital. Finally, UTC notes that a number of commenters support UTC's recommendations that: (1) the FCC carefully evaluate the basis for setting user fee amounts and not use the commercial license auctions as the basis for these fees; and (2) services which meet vital public needs, such as those generally found in the proposed Emergency Response and Public Services Pools, be exempted from user fees or required to pay only reduced fees.

As an alternative to marketplace incentives, UTC continues to support an overlay of the FCC's type acceptance deadlines for narrowband equipment and the previously-filed Industry Consensus for narrowband conversion. The combination of a type acceptance requirement and a mandatory change in licensing status will facilitate a smooth transition to more efficient technologies while providing all licensees with continued access to spectrum to meet private communications requirements.

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TO: The Commission

REPLY COMMENTS OF UTC

Pursuant to Section 1.415 of the FCC's Rules, UTC, The Telecommunications Association (UTC), respectfully responds to the comments filed in response to the Federal Communications Commission's (Commission or FCC) *Further Notice of Proposed Rule Making (FNPRM)*, FCC 95-255, released June 23, 1995, in the above-captioned matter.¹ UTC's reply comments also respond to the comments received in response to the Commission's proposal to consolidate the existing private land mobile radio pools operating below 512 MHz.

¹ By *Order*, DA 95-2090, released October 2, 1995, the dates for filing comments in response to the *FNPRM* were extended to January 5, 1996. By *Public Notice*, DA 96-2, released January 11, 1996, the FCC further extended the deadline for filing reply comments to January 16, 1996.

I. Consolidation of Service Pools

A. Objections to Pool Consolidation Are Unfounded

In the *Report and Order (R&O)* in this proceeding, the FCC adopted a policy decision that the current private land mobile radio services below 512 MHz should be consolidated. Because of a difference of opinion among the commenters to the original *Notice of Proposed Rulemaking*, the FCC requested user groups and frequency coordinators to submit a consensus proposal that “reflects the interests and needs of the PLMR community,” and that is “mutually agreeable, reasonable, and workable.”²

The comments in response to the *FNPRM* indicate the smaller industry groups would generally prefer to maintain the *status quo*,³ but groups representing the majority of radio users acknowledge that the time has come for consolidating the various radio services, subject to certain safeguards to preserve sound spectrum management.⁴ Several arguments are raised in favor of maintaining the *status quo*:

- Interservice sharing works well, and is not time-consuming, burdensome or expensive.⁵
- Consolidation will require use of a single, common database.⁶

² *FNPRM*, para. 50.

³ Associated Public Safety Communications Officials International (APCO), p. 3; American Automobile Association (AAA), pp. 2-3; Coalition of User Associations (AAA, American Trucking Associations, *et al.*), pp. 1-4; Aeronautical Radio, Inc. (ARINC), p. 13; Alarm Industry Communications Committee (AICC), pp. 2-3; American Association of State Highway and Transportation Officials (AASHTO), pp. 2-3; and Association of American Railroads (AAR), pp. 13-27.

⁴ UTC, pp. 2-12; Joint Commenters (Personal Communications Industry Association, Industrial Telecommunications Association, *et al.*), pp. 2-5; and American Petroleum Institute (API), pp. 7-10.

⁵ AASHTO, p. 2; and Coalition of User Associations, pp. 3-4.

⁶ AAA, p. 4; and AICC, p. 4.

- Consolidation will be inconsistent with the concept of representative coordination.⁷
- Consolidation will jeopardize safety of life and property by creating the potential for dissimilar users to have access to the same channels.⁸

However, a carefully designed consolidation plan will overcome each of these objections.

1. Success of Interservice Sharing Proves that Pool Consolidation Is Feasible

The fact that interservice sharing generally works well does not necessarily support maintenance of the *status quo*; rather, it highlights the fact that disparate users can share channels and that coordinators in one radio service can protect licensees whose eligibility is established in another radio service. As noted in UTC's Comments, many non-Power Radio eligibles are licensed on Power Radio channels through interservice sharing, and many Power Radio eligibles have been licensed on channels in other service categories through this process.

While it is true that interservice frequency coordination currently requires concurrence of both the in-service coordinator and the out-of-service coordinator, this protection only exists at the time of application by the out-of-service licensee. Subsequent to licensing, any other frequency recommendations that might affect the out-of-service licensee are made by the in-service coordinator without reference to the coordinator for the out-of-service licensee's radio service. To the best of UTC's

⁷ AASHTO, p. 3; and Coalition of User Associations, p. 1.

⁸ AAR, pp. 13-20; Amtrak, pp. 1-2; Norfolk Southern, pp. 1-2; CSX Transportation, Inc. (CSXT), pp. 3-4; Union Pacific Railroad Company and Missouri Pacific Railroad Company (Union Pacific), pp. 4-5; and Canadian Pacific Railway System (CPRS), pp.2-3.

knowledge, there have been no complaints from any out-of-service licensees that coordinators have been unable or unwilling to provide adequate frequency protection for them.

Service pool consolidation could actually improve upon the interservice sharing concept by creating additional incentives for coordinators to work together to manage their common spectrum. Today, interservice sharing requests are reviewed on an *ad hoc* basis based on standards developed by each coordinator, which standards can be changed without notice to or concurrence from any other coordinator.⁹ Pool consolidation will compel coordinators to arrange for proper data exchange and the development of uniform standards.

2. A Single Database Is Not Critical to Pool Consolidation

Pool consolidation will not necessarily require coordinators to use a single database. For example, UTC understands from its third-party database provider that it would be possible for coordinators to maintain separate, proprietary databases provided they routinely exchange coordination data electronically. This concept is also supported by the Joint Commenters.¹⁰ UTC agrees with API that the FCC should mandate the use

⁹ Some services currently base frequency recommendations on licensing data that is not included in the FCC's database and is only known to the coordinator and/or the licensee. For example, instead of indicating areas of operation on their license, these systems are oftentimes licensed for "nationwide" operation, with the specific operating areas included in the "real" licensing database maintained by the coordinator. Consolidation of radio services would help ensure that essential licensing information, such as area of operation, is made publicly available.

¹⁰ Joint Commenters, p. 11.

of good data processing techniques so that all coordinators will have access to information needed to provide quality frequency recommendations.¹¹

3. By Establishing Pools With Like-Kind Users, the Representative Nature of Frequency Coordinators Can Be Maintained

It has been suggested that if the pools are consolidated, coordinators will no longer be representative of the users.¹² To the contrary, UTC believes that if the pools are consolidated so as to group services with the same criticality of function, and if coordination within the pool is limited to coordinators that are representative of one or more groups within the pool, the intent of Section 332 will be met. The FCC must have some means of holding coordinators accountable, and a requirement that each coordinator be representative of at least one of the groups in the pool would provide some “self-policing” of coordination practices.

4. Protecting Safety of Life and Property Is A Function of Good Coordination Practices, Not Maintaining Separate Radio Services

A principal objection to radio service consolidation is the argument that safety of life and property will be jeopardized if out-of-service coordinators are allowed to coordinate channels currently allocated to one radio service. AAR argues, for example, that consolidation will expose railroad transmissions to harmful interference, increase congestion on the railroads’ frequencies, and add to the complexity of radio equipment

¹¹ API, p. 11.

¹² AASHTO, p. 3.

and operating procedures.¹³ AAR argues that consolidation of the Railroad Radio Service with any other service would entail an unacceptable loss of control over the decision of who has access to radio channels and would therefore interfere with the adequacy of railroad radio communications.¹⁴ Other commenters raise similar concerns for users in their radio services.¹⁵

First, it should be understood that as the coordinator for electric, gas and water utilities in the Power Radio Service, UTC is extremely sensitive to the need for high quality communications used in activities involving the safety of life and property. Mobile radio is used by crews working along electric transmission and distribution lines, in nuclear, fossil fuel, and hydroelectric power plants; along natural gas transmission and distribution systems; and in the maintenance and operation of water purification and distribution systems. Many of these activities involve the control of volatile substances that, if mishandled, could endanger the lives of the crews as well as the consuming public.¹⁶ Moreover, the services provided by these licensees are essential public services that are relied upon by everyone, including police, fire and rescue services, transportation companies, manufacturing plants -- basically, everyone eligible under Part 90 as well as residential consumers. UTC would therefore oppose any consolidation plan that would permit a decline in the availability or quality of private radio communications service.

¹³ AAR, p. 14.

¹⁴ AAR, p. 15.

¹⁵ AAA, pp. 6-7; and AICC, pp. 6-7.

¹⁶ See, e.g., PacifiCorp, p. 3.

However, UTC does not agree with those who would automatically characterize any and all consolidation proposals as threats to safety of life and property. It is obvious to UTC, as it should be to the Commission, that some coordination groups see no personal benefit to pool consolidation because (1) they fear competition, or (2) they risk losing full control over “their” channels to other radio users. While it might be difficult for all of the existing coordination groups to compete effectively in a consolidated pool environment, the FCC should not maintain separate pools just to protect one coordinator from competition. Likewise, just because one coordinator has exercised control over a pool of channels for decades is no reason to continue that arrangement when it is possible to allow sharing of channels by users in different service categories.

The real concern in pool consolidation is to create an environment in which the truly unique needs of particular radio users can be accommodated while generally providing for greater sharing among like-kind users. UTC believes that its three-pool approach, based on grouping like-kind services, can meet these requirements.

B. Services Having the Same Criticality of Function Should Be Consolidated

In its Comments on the *FNPRM*, UTC presented a consolidation plan that would group the current radio services according to the relative criticality of the functions served by users in each of the various services. UTC noted that different industries use mobile radio for different applications, but from a coordination and licensing standpoint, differences in the applications or functions supported by the radio transmitter are only significant in terms of the criticality of function and the amount of protection to be

afforded to the system. Even within industries there are wide variations in the types of radio systems and applications supported by licensed radio devices. UTC therefore recommended grouping the current radio services into three service categories:

NEW CATEGORY	OLD RADIO SERVICES
<i>“Emergency Response”</i>	Police (§ 90.19)
	Fire (§ 90.21)
	Emergency Medical (§ 90.27)
	Special Emergency (§§ 90.33-55)
<i>“Public Service”</i>	Local Government (§ 90.17)
	Highway Maintenance (§ 90.23)
	Forestry-Conservation (§ 90.25)
	Power (§ 90.63)
	Petroleum (§ 90.65)
	Railroad (§ 90.91)
<i>“Business/Commercial”</i>	Forest Products (§ 90.67)
	Film and Video Production (§ 90.69)
	Relay Press (§ 90.71)
	Special Industrial (§ 90.73)
	Business (§ 90.75)
	Manufacturers (§ 90.79)
	Telephone Maintenance (§ 90.81)
	Motor Carrier (§ 90.89)
	Taxicab (§ 90.93)
	Automobile Emergency (§ 90.95)

The Joint Commenters propose a two-pool plan: (1) “Public Safety,” consisting of the current “Public Safety” and “Special Emergency” radio services, and (2) “Public Service,” consisting of all other Part 90 radio services.¹⁷ API presents a five-pool plan:

¹⁷ Joint Commenters, pp. 2-3.

(1) “Industrial Safety,” (2) “Emergency Response,” (3) “Non-Commercial,” (4) “Specialized Mobile Radio,” and (5) General Category.¹⁸

UTC strongly disagrees with the Joint Commenters’ two-pool proposal. While noting that technological developments and better coordination standards will largely eliminate the need for separate radio services, the Joint Commenters also propose that certain “unique frequencies” should be separately identified and protected in the rules; *e.g.*, channels for control of slave locomotives, air transport utility communications, fixed point-to-multipoint railroad telemetry, oil cleanup and emergency response.¹⁹ UTC’s three-pool plan, by contrast, would include most of these “unique” channels in the intermediate “Public Service” category, and would permit the coordinators in this pool to identify other channels for special protections. This flexibility would be largely lost under the Joint Commenters’ plan because it would be difficult, if not impossible, to get all of the coordinators in the “non-Public Safety” pool to agree on a spectrum management plan. By grouping services with the same criticality of function and similar operating requirements, there will be a much greater likelihood that the coordinators will be able to reach consensus.²⁰

¹⁸ Supplemental Comments of API, pp 7-11.

¹⁹ Joint Commenters, p. 6.

²⁰ In any event, UTC would note that the Joint Commenters’ list of “unique” channels is incomplete as it does not include some unique channels currently allocated to the Power Radio Service; *e.g.*, the electric utility load shedding frequency and the “power pool” frequencies.

Consolidation of like-kind services will also permit some accommodation of biomedical telemetry devices in the Business/Commercial Pool, as requested by Hewlett-Packard (p. 2) and SpaceLabs Medical, Inc. (p. 4), but without the need for a formal negotiated rulemaking process.

API's proposal shares many of the attributes of the UTC plan; indeed, its proposal for an "Industrial Safety" pool is similar to UTC's proposal for a "Public Service" pool. Like UTC's proposal, API's recommendations are based upon grouping services that have the same criticality of function. Grouping services along functional lines will also permit the application of distinct licensing and operational policies to these radio services in order to protect "higher priority" services from encroachment or commercialization while promoting flexibility for "lower priority" services. Such differentiation would be impossible if all "non-Public Safety" services are consolidated, as proposed by the Joint Commenters.

II. RESPONSE TO ISSUES RAISED IN THE FNPRM

A. The Rules Should Enable Licensees To "Earn" Exclusivity

A number of the commenters agree with UTC that there would be a benefit in affording private land mobile radio licensees the option to obtain a form of exclusivity.²¹ As NYCTA notes, exclusivity will promote spectrum efficiency since it will allow for the introduction of trunking and other technologies that require the availability of interference-free channels.²² Significantly, one of the few parties to object to shared-exclusivity was the railroads, who made the circular argument that shared exclusivity is unnecessary since the railroads already have shared exclusivity and use it very

²¹ AAA, p. 9; AICC, p. 7; APCO, p. 3; API, p. 5; Ericsson, p. 4; Forest Industries Telecommunications (FIT), p. 8; International Taxicab and Livery Association (ITLA), p. 8; Land Mobile Communications Council (LMCC), pp. 14-15; Manufacturers Radio Frequency Advisory Committee (MRFAC), p. 6; New York City Transit Authority (NYCTA), p. 2; PacifiCorp, p. 3; Securicor Radiocom Limited (Securicor), p. 4; and United and Central Telephone Companies (The Sprint LECs), p. 3.

²² NYCTA, p. 2.

efficiently.²³ Far from making a convincing case as to why shared-exclusivity should be rejected, the railroad argument actually demonstrates the value of licensees obtaining access to exclusive frequencies.²⁴

While LMCC disagreed with the term “shared-exclusivity,” its proposal to adopt “Protected Service Areas” (PSAs) was in many respects consistent with UTC’s proposal to allow licensees to “earn” a type of shared-exclusivity that would provide interference protection for a specific service area. Specifically, under UTC’s proposal existing licensees would have the option to enter into contractual agreements with neighboring co-channel licensees to establish areas of exclusive assignment, thereby precluding new co-channel licensees from being licensed within the area, except by mutual agreement of all parties to the exclusivity plan. Under UTC’s proposal a single existing licensee could request exclusivity over the extent of its service area if there are no other co-channel licensees in the area.

In order to provide licensees a reasonable opportunity to reach an agreement, UTC supported the FCC’s proposal that licensees could request the frequency coordinator(s) to stop processing requests for new co-channel assignments in their geographic area for a period of 90 days while an agreement is negotiated. A few commenters such as MRFAC and ITLA, have urged that this period be extended to six months because in some areas of

²³ Union Pacific, p. 12.

²⁴ It should also be noted that Union Pacific’s and AAR’s objections to shared-exclusivity are premised on the railroads’ continued access to exclusive frequencies which in turn rests on their belief that the Railroad Radio Service Channels will not be consolidated. The more rational outcome would consolidate the Railroad Radio Service with like-kind entities into a “Public Service Pool,” and permit railroads seeking to implement more efficient technologies to obtain shared-exclusivity.

the country some licensees may be required to negotiate with dozens of other licensees and it will therefore take more than 90 days to secure an agreement with all of these parties.²⁵ While UTC agrees that in certain situations it may be difficult to arrive at an agreement within the prescribed 90 day period, UTC would recommend that rather than extending the standard time period the FCC should adopt a policy that allows the parties to seek an extension of time upon a demonstration that they are involved in on-going negotiations and are likely to reach an agreement within the requested extension period. In this way, licensees will not be able to tie-up frequencies for prolonged periods of time without attempting to reach a shared-exclusivity agreement.

UTC recommended that in order to earn shared exclusivity, all of the co-channel licensees that are party to the agreement would be required to convert to the then-applicable narrowband or equivalent efficiency standard within twelve months of the grant of the exclusivity. However, some commenters, such as MRFAC, point out that in non-urban areas that are not experiencing congestion it does not make sense to require users to prematurely convert to narrowband or an equivalent efficiency standard in order to obtain exclusivity.²⁶ Other commenters, such as PacifiCorp and NYCTA note the difficulty that some users will have in converting large and complex systems within a short time frame.²⁷ In light of these concerns, UTC recommends that the Commission

²⁵ MRFAC, p. 8; and ITLA, p. 9.

²⁶ MRFAC, p. 7.

²⁷ PacifiCorp, p.3; and NYCTA, p. 2.

adopt a twelve month conversion period but also create provisions whereby parties to an exclusivity agreement can meet the applicable efficiency standards under a slow growth construction schedule of up to five years if they provide sufficient justification, such as size of system, complexity, unusual budgeting constraints or rural nature of the system.²⁸ Under the slow growth provisions the shared-exclusivity licensees would have to provide a conversion plan and demonstrate that they are meeting applicable benchmarks.

A number of commenters echo UTC's concern that the protected zone of the shared exclusivity license should not be based on an arbitrary predetermined geographic basis.²⁹ UTC therefore reiterates its proposal that a licensee's shared-exclusivity radius should be tied to its system size, as determined by the FCC's power/height tables. In this way each licensee could select the area within which it wants protection from co-channel users by securing concurrence from all co-channel users within that radius. The licensee would then be able to enforce the separation distances in the table against co-channel applicants up to the radius within which it has secured concurrence.

A number of commenters agree with UTC that the shared exclusivity option should be limited, at least initially, to existing licensees. In this way, the FCC will eliminate speculators and provide an incentive for existing licensees to implement more advanced and spectrally efficient systems. Moreover, as AICC notes it is the incumbents

²⁸ The FCC has adopted similar slow growth rules for exclusive PLMR systems in the 800 MHz band, 47 C.F.R. Section 90.629.

²⁹ Ericsson, p. 5; FIT, p. 9.

that have suffered the effects of channel congestion for years and they should therefore be given the first shot at reaping the benefits of exclusivity.³⁰

Those parties that oppose the creation of shared-exclusivity rights generally rest their objections on the basis of the administrative difficulty in obtaining exclusivity agreements in the congested PLMR bands.³¹ UTC acknowledges that in many areas of the country it may be unrealistic to expect certain radio services to obtain sharing agreements. It is precisely for this reason that UTC suggested that it would be appropriate to address the issue of exclusivity in different manners to address the unique attributes of the three service categories -- Emergency Response; Public Service; and Business/Commercial.

1. Emergency Response Pool

Commenters representing the police, fire and emergency medical services that would comprise the Emergency Response Service indicate that any rules creating exclusivity would need to recognize the special needs of these users. To this end APCO has stated its willingness to work with the coordinators of the other emergency services to attempt to develop appropriate sharing criteria.³² UTC concurs that the Emergency Response community is in the best position to devise the requirements and procedures for obtaining exclusivity.

³⁰ AICC, pp. 8-9.

³¹ American Mobile Telecommunications Association (AMTA), p.8 ; and Motorola, p. 3.

³² APCO, pp. 3-4.

2. Public Service Pool

In supporting the creation of a “shared-exclusivity” licensing option for the Public Service Pool, UTC noted that shared exclusivity is particularly suited to those entities that would compromise the Public Service Category. Even parties such as AMTA that generally oppose the concept of exclusivity for incumbent PLMR licensees recognize that public service entities, such as utilities, pipelines and railroads, that often have *de facto* exclusivity, are in the best position to implement shared exclusivity.³³ In addition, these entities are more likely than other private land mobile users to have extensive service territories that would benefit from the wide-area trunked systems that shared exclusivity would allow. Finally, shared exclusivity may be more viable in the Public Service Category as the more limited number of eligibles and similar functionalities between licensees affords a greater likelihood of co-channel licensees reaching a mutual agreement. This point was underscored by API’s statement that exclusivity agreements could only be contemplated between similarly situated energy industry licensees.³⁴

3. Business/Commercial Pool

As a practical matter, the mechanism of shared exclusivity may have less utility in the Business/Commercial Category. Commenters indicate that the proliferation of existing licensees, intense reuse of spectrum, and widely disparate services would make it extraordinarily difficult to achieve meaningful exclusivity in the Business/Commercial Category.³⁵ Nevertheless, UTC continues to believe that shared-exclusivity should be

³³ AMTA, p. 9.

³⁴ API, p. 7.

³⁵ AMTA, p. 7; and Motorola, p. 3.

allowed as an option in the Business/Commercial Category as some parties may be able to achieve workable sharing agreements.

B. Resale With Certain Restrictions Should Be Allowed

First and foremost, UTC believes that the rules and requirements arising from this rulemaking should preserve the private non-commercial nature of the private land mobile radio bands. However, UTC continues to support the concept of allowing a "non-commercial" private land mobile radio licensee to lease **"reserve"** capacity on its system.³⁶ These positions are not inconsistent. As UTC explained in its comments, "reserve" capacity is capacity for which the licensee has a legitimate system requirement but at times may not be utilized. PacifiCorp points to the feasibility of a utility leasing reserve capacity during non-emergency situations.³⁷ As Ericsson and NTT note, allowing existing users to lease reserve capacity will help defray some of the costs of converting to more efficient systems.³⁸ In order to ensure that the leased capacity is truly "reserve" and to discourage speculators, the Commission should require that private land mobile radio licensees satisfy all channel loading requirements on the basis of their internal systems. In this way the Commission can address API's concern that a nominal private licensee

³⁶ In addition, all licensees should continue to be able to provide capacity on an "at-cost" or non-profit basis provided that they meet demonstrable loading requirements at the time of application.

³⁷ PacifiCorp, p. 3.

³⁸ Ericsson, p. 5; and NTT, p. 6.

could use its private status as the foundation to raid PLMR spectrum and displace critical private users.³⁹

UTC wants to emphasize that its support of allowing private system licensees to lease reserve capacity does not mean that UTC supports the direct licensing of third-party entrepreneurs to provide commercial services to end-users in the private land mobile radio bands. UTC is in complete agreement with PacifiCorp that resale must be limited to reserve capacity of entities that are themselves eligible for licensing in the bands below 512 MHz. For this reason, UTC adamantly opposes AMTA's suggestion that the FCC provide "entrepreneurs with the regulatory tools needed to clear a reasonable amount of spectrum."⁴⁰ PLMR licensees do not need or want the type of "entrepreneurs" that AMTA supports. In order to ensure that frequencies remain available for essential services, UTC renews its recommendation that resale be expressly limited to users eligible in the licensee's same pool or to eligible users in any of the "upper pools" as described in UTC's plan for consolidating the various service pools.

1. Business/Commercial Category

Licensees in the Business/Commercial Pool that satisfy the FCC's loading requirements through internal use could lease reserve capacity to any other entity that is eligible for licensing in the Business/Commercial Category. In addition, these licensees

³⁹ API, p. 12.

⁴⁰ AMTA, p. 9.

could sell reserve capacity to eligible users in the Public Service and Emergency Response Pools.

2. Public Service Category

Licensees in the Public Service Pool that satisfy the FCC's loading requirements through internal use could lease reserve capacity to any other entity that is eligible for licensing in the Public Service Category. In addition, these licensees may sell reserve capacity to eligible users in the Emergency Response Category. Limiting resale in such a manner is warranted by the fact that eligibility for the Public Service Category is premised on the licensee's provision of essential services, and the need for clear, reliable channels. It would be inconsistent to allow these channels to become occupied by entities who do not qualify for licensing within the pool.

3. Emergency Response Category

Licensees in the Emergency Response Pool that satisfy the FCC's loading requirements through internal use may only lease reserve capacity to other entities that are themselves eligible for licensing in the Emergency Response Category. Again, such a limitation is justified given the nature of the Emergency Response Pool.

C. The Vast Majority of Commenters Oppose the Use of Competitive Bidding in the Private Radio Bands

The commenters are virtually unanimous in their resounding opposition to the introduction of competitive bidding in private land mobile bands below 800 MHz. UTC noted in its comments that the use of competitive bidding in these bands is inconsistent

with current and pending FCC auction authority and impractical for these heavily-used bands.⁴¹

The echoes of these arguments among the commenters is almost deafening. AAA states that auctioning the PLMR band would utterly destroy the concept of private use radio and frustrate the public interest that has been advanced by these services for five decades.⁴² PacifiCorp notes that auctions may encourage competition for critical operating system frequencies which could jeopardize the safety and reliability of power systems.⁴³ The Sprint LECs state that the imposition of auctions could jeopardize their ability to rely on their private land mobile licenses for internal operations and result in a substantial increase in costs.⁴⁴

Ericsson notes that auctions are inappropriate for PLMR spectrum since PLMR users do not have the commercial subscriber base to support bids in auctions nor do their service territories coincide with the large market areas necessary to conduct auctions.⁴⁵ ITLA adds that the transaction and opportunity costs related to PLMR auctions would far outweigh any perceived efficiency gains.⁴⁶ Furthermore, LMCC and AMTA both note that these heavily-used bands do not present a viable opportunity for competitive bidding.⁴⁷

⁴¹ UTC, p. 22.

⁴² AAA, p. 6.

⁴³ PacifiCorp, p. 4.

⁴⁴ The Sprint LECs, p. 5.

⁴⁵ Ericsson, p. 4.

⁴⁶ ITLA, p. 12.

⁴⁷ LMCC, p. 16; AMTA, p. 12.

The Commission's specific proposal to auction overlay licenses in these heavily congested bands drew almost universal criticism. AAA accurately describes the winners of overlay licenses as potential spectrum "slumlords" which will have an incentive to drive the current licensees out of the band, thereby harming the productivity and efficiency of American businesses.⁴⁸ Motorola notes that auctioning overlay licenses will shift the focus of the refarmed bands away from internal use systems to third-party systems and may damage the nation's infrastructure industries.⁴⁹ Securicor explains that overlay licensing would be extremely complicated and may not be as attractive as these licenses may be in other bands in which individual incumbents have aggregated a significant base of spectrum.⁵⁰

API adamantly opposes overlay licenses because they would stifle the growth of existing PLMR operations and unnecessarily choke these already-congested bands.⁵¹ ITLA and MRFAC agree and note that freezing existing licensees under an overlay licensing program would adversely affect those incumbents which need to expand or modify their coverage or usage.⁵² AAR states that overly licensing would make public safety hostage to the highest bid by constraining existing railroad systems.⁵³ AICC adds that overlay licensing will only invite large commercial operators and speculators to buy

⁴⁸ AAA, pp. 5-6.

⁴⁹ Motorola, p. 3.

⁵⁰ Securicor, p. 6.

⁵¹ API, p. 13.

⁵² ITLA, p. 12; MRFAC, pp. 10-11.

⁵³ AAR, p. 30.

up the PLMR spectrum and will leave incumbents to wither on the vine.⁵⁴ Unable to expand or modify their systems, the incumbents will eventually be forced to abandon their systems, stranding billions of dollars in investment.⁵⁵

In its comments, UTC noted that the FCC has no authority, even under pending legislation, to auction licenses in either the Emergency Response or Public Service Pools. This view is shared by numerous parties who correctly point out that the proposed expanded auctioning authority provisions included as part of the budget legislation specifically exempt from auctions public safety radio services, including services offered by non-government entities that "protect the safety of life, health, and property and that are not made commercially available to the public."⁵⁶ Report language from the House and Senate budget committees further confirms that this exemption includes spectrum used by utilities, pipelines and railroads to protect life, health and property.⁵⁷

Finally, if the FCC does receive expanded auctioning authority for some PLMR services, UTC joins with LMCC, MRFAC and other commenters in urging the FCC to ensure that auctions permit equitable participation by PLMR licensees.⁵⁸ The FCC should not, for example, pit PLMR licensees against commercial spectrum users in auctions. It is clear from the auctions that have been held so far that commercial spectrum users have significantly deeper pockets and will be able to outbid most PLMR

⁵⁴ AICC, pp. 4-5.

⁵⁵ AICC, pp. 4-5.

⁵⁶ AAA, p. 7; Hewlett-Packard, p. 5; AAR, pp. 31-32.

⁵⁷ Report No. 104-280, *Report Of The Committee On The Budget, House of Representatives*.

⁵⁸ LMCC, pp. 16-17; MRFAC, p. 10.